

EXHIBIT 34

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

-----X

ORACLE CORPORATION, a Delaware Corporation,
ORACLE USA, INC., a Colorado corporation,
And ORACLE INTERNATIONAL CORPORATION, a
California corporation,

Plaintiffs,

vs.

SAP AG, a German corporation, SAP AMERICA,
INC., a Delaware corporation, TOMORROWNOW,
INC., a Texas corporation, and DOES 1-50,
inclusive,

Defendants.

-----X

11:00 a.m.

March 5, 2009

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Videotaped 30(b)(6) Deposition of
TomorrowNow, Inc, by MARK WHITE, held at the
offices of Bingham McCutchen, LLP, 399 Park
Avenue, New York, New York, before David
Henry, a Notice Public of the State of New
York.

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11:04:36 15 Q. Let's start with asking what your
11:04:39 16 job title and responsibilities for at the
17 time that SAP acquired TomorrowNow, January,
11:04:45 18 2005.

11:04:45 19 A. My job title at the time was
11:04:47 20 senior vice-president, SAP Americas, chief
11:04:51 21 financial officer.

11:05:06 22 Q. And starting in January, 2005 and
11:05:10 23 going forward to today, how has your job
11:05:13 24 title changed, if it has?

11:05:18 25 A. In April of 2007, I was appointed

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11:05:21 1 chief operating officer for SAP Americas.

11:05:28 2 The job level was still senior

11:05:31 3 vice-president and then in effectively the

11:05:34 4 last week of June of 2007, I was appointed

11:05:37 5 executive chairman of TomorrowNow.

11:05:42 6 Q. And what is your job title?

11:05:44 7 A. Today it's senior vice-president

11:05:46 8 and chief financial officer SAP North

11:05:50 9 America.

11:05:50 10 Q. And are you still executive

11:05:51 11 chairman of TomorrowNow?

11:05:57 12 A. Yes, I am.

11:06:01 13 Q. Can you describe your job

11:06:02 14 responsibilities over time with respect to

11:06:04 15 TomorrowNow?

11:06:06 16 A. After the acquisition of

11:06:08 17 TomorrowNow in early 2005, I was appointed

11:06:13 18 to the board of TomorrowNow as it was a

11:06:17 19 wholly-owned subsidiary of SAP. And in

11:06:24 20 June, July of 2007, I was appointed as

11:06:28 21 executive chairman, so responsible at that

11:06:31 22 time for the day-to-day operations of

11:06:33 23 TomorrowNow.

11:06:33 24 Q. And as a member of the board of

11:06:35 25 directors, what were your responsibilities

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11:06:37 1 with respect to TomorrowNow?

11:06:39 2 A. It was more statutory in nature
11:06:42 3 to sign off on the financial results,
11:06:44 4 approve bonus plans, compensation plans, and
11:06:48 5 approve back office, what I will call back
11:06:53 6 office functions like real estate, location
11:06:56 7 of real estate, approval of the hiring plans
11:07:03 8 for headcount.

11:07:04 9 Q. Anything else?

11:07:04 10 A. Not really.

11:07:05 11 Q. And can you describe in a little
11:07:08 12 more detail your responsibilities as
11:07:10 13 executive chairman?

11:07:11 14 A. For executive chairman I was
11:07:14 15 responsible for primarily four areas. One
11:07:20 16 was to determine the ultimate conclusion for
11:07:27 17 TomorrowNow, number one; number two, take
11:07:31 18 any disciplinary actions, number three,
11:07:38 19 implement the company's directive around
11:07:42 20 project Level-Set; and fourth was to
11:07:46 21 continue to provide the daily service to the
11:07:49 22 customers.

11:07:51 23 Q. Anything else?

11:07:53 24 A. No. Those are really the four
11:07:55 25 major categories.

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11:07:57 1 Q. Did you report to anyone?

11:07:59 2 A. I reported to Werner Brandt who
11:08:02 3 is the global chief financial officer.

11:08:05 4 Q. Did you report to anyone else?

11:08:07 5 A. No.

11:08:07 6 Q. And when you were -- prior to
11:08:09 7 becoming executive chairman as a member of
11:08:11 8 the TomorrowNow board of directors, did you
11:08:13 9 report to anyone?

11:08:15 10 A. Not in my capacity as a board
11:08:18 11 member. As chief financial officer I
11:08:21 12 reported to Werner Brandt and I reported to
11:08:24 13 Bill McDermott.

11:08:25 14

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11:08:54 1

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11:09:02 5

11:09:02 6 Q. And are you designated as
11:09:05 7 TomorrowNow's corporate representative for
11:09:07 8 all the topics listed?

11:09:08 9 A. Yes.

11:09:09 10 Q. And do you understand that the
11:09:11 11 testimony you give today is on behalf of
11:09:12 12 TomorrowNow?

11:09:13 13 A. Yes.

11:09:14 14 Q. And today you are employed by SAP
11:09:20 15 America?

11:09:20 16 A. SAP America.

11:09:21 17 Q. But you are testifying as
11:09:24 18 TomorrowNow's corporate designee on the
11:09:26 19 topics in Exhibit 1031?

11:09:28 20 A. Yes.

11:09:28 21 Q. Do you have any personal
11:09:29 22 knowledge of the topics listed in
11:09:32 23 Exhibit 1031?

11:09:32 24 A. Yes.

11:09:33 25 Q. What is that personal knowledge?

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11:09:35 1 MR. COWAN: Objection, form.

11:09:39 2 You can answer.

11:09:43 3 A. The personal knowledge is from
11:09:44 4 the time I was appointed as executive
11:09:46 5 chairman beginning in either last week of
11:09:49 6 June or first week of July of 2007 and to
11:09:55 7 its ultimate wind-down.

11:09:57 8 Q. Do you have any personal
11:09:58 9 knowledge prior to your appointment as
11:10:01 10 executive chairman?

11:10:02 11 A. Only in my capacity as the
11:10:04 12 chairman of the board of directors of
11:10:06 13 TomorrowNow.

11:10:08 14

11:10:10 15

11:10:12 16

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11:13:01 6

11:13:02 7

11:13:03 8

Q. When you said that he issued a

11:13:14 9

directive to Andrew Nelson, which directive

11:13:18 10

were you referring to?

11:13:19 11

A. The SAP AG management board had

11:13:24 12

issued a directive through Chris Faye to

11:13:31 13

communicate to Andrew Nelson that the

11:13:33 14

environments were to be all done remotely.

11:13:40 15

Q. Mr. Faye said he communicated

11:13:42 16

that to Andrew Nelson?

11:13:44 17

A. Yes, he did.

11:13:45 18

11:13:46 19

11:13:48 20

11:13:49 21

11:13:51 22

11:13:53 23

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11:13:58 25

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11:16:03 8

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11:16:08 10

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11:21:04 14

11:21:04 15 Q. Let me repeat the question. You
11:21:09 16 had mentioned that Mr. Faye told you about
11:21:12 17 phone meetings that he had with Andrew
11:21:14 18 Nelson. What did he tell you about those
11:21:16 19 meetings?

11:21:16 20 A. That during those meetings he
11:21:18 21 emphasized the company directive to
11:21:24 22 implement Project Blue.

11:21:26 23 Q. How did he emphasize it?

11:21:29 24 A. Just continuous communication
11:21:33 25 during the monthly meeting, he would say to

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11:21:36 1 Andrew that it is a company directive that
11:21:40 2 this be done.
11:21:41 3
11:21:44 4
11:21:46 5
11:21:49 6
11:21:51 7
11:21:53 8
11:21:56 9
11:21:58 10
11:22:01 11
11:22:05 12
11:22:08 13
11:22:10 14
11:22:11 15
11:22:13 16
11:22:15 17
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Q. Are you aware that TomorrowNow

14:12:25 9

issued procedures in June of 2007

14:12:28 10

prohibiting the copying of new environments?

14:12:33 11

A. Yes.

14:12:33 12

Q. And those procedures are a set of

14:12:35 13

rules that relate to the handling of

14:12:38 14

intellectual property, right?

14:12:41 15

A. Yes.

14:12:41 16

Q. Why were they put in writing?

14:12:45 17

MR. COWAN: Objection, form.

14:12:48 18

Q. Let me ask, were they put in

14:12:50 19

writing?

14:12:50 20

A. Yes.

14:12:51 21

Q. Why?

14:12:52 22

MR. COWAN: Objection, form.

14:12:53 23

A. To clarify to the TomorrowNow

14:13:03 24

employees some of the policies that would

14:13:11 25

underline the directive that SAP gave to

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14:13:13 1 TomorrowNow back in early 2005.

14:13:22 2 Q. They were put -- talking about
14:13:25 3 the June, 2007 procedures, and I just want
14:13:28 4 to make sure I understand your testimony.
14:13:30 5 They were put into writing to clarify to the
14:13:32 6 TomorrowNow employees some of the policies
14:13:35 7 that underlined the directive, is that
14:13:39 8 right?

14:13:40 9 A. Yes.

14:13:41 10 Q. Why would putting it in writing
14:13:45 11 clarify for the TomorrowNow employees some
14:13:48 12 of the policy?

14:13:50 13 MR. COWAN: Objection, form.

14:13:51 14 A. Because the original directive
14:13:54 15 back in early 2005 was never put in place.
14:14:00 16 Had it been put in place, this sort of
14:14:03 17 policy would have been a by product of it.

14:14:08 18

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19:19:35 1

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19:20:44 22 Q. Look at what has been marked

19:20:46 23 Exhibit 1045. Exhibit 1045 is an e-mail

19:20:54 24 Bates labelled SAPOR00632752 through 755.

19:21:02 25 The top e-mail is from you to Ann Tummon and

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19:21:06 1 a variety of others. The subject is forward
19:21:10 2 TomorrowNow employee communication, the date
19:21:11 3 is November 26, 2007. Do you have that in
19:21:14 4 front of you?

19:21:14 5 A. I do.

19:21:15 6 Q. Did you send this e-mail, the top
7 people?

19:21:19 8 A. It was sent on my behalf by Mandy
19:21:22 9 Wheeler, but I did write the content of it.

19:21:24 10 Q. Are you speaking of the content
19:21:26 11 that begins below Mandy Wheeler's name on
19:21:29 12 the first page?

19:21:29 13 A. Correct.

19:21:30 14 Q. And the very top e-mail, it looks
19:21:33 15 like you're forwarding that e-mail on to
19:21:35 16 some others, do you see that?

19:21:36 17 A. Yes.

19:21:36 18 Q. Do you recall this e-mail?

19 A. I do.

19:21:36 20 Q. And you wrote the content in
19:21:38 21 under Mandy Wheeler's name?

19:21:40 22 A. I did.

19:21:40 23 Q. Was Mandy Wheeler your assistant?

19:21:43 24 A. She was my assistant at

19:21:48 25 TomorrowNow but she was not my day-to-day

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19:21:51 1 assistant.

19:21:54 2 Q. Your day-to-day assistant with
19:21:56 3 regard to SAP duties?

19:21:58 4 A. And my office, my main office
19:22:00 5 location in Newtown Square. But because
19:22:06 6 Mandy had the ability to communicate to all
19:22:09 7 of TomorrowNow employees much more easily, I
19:22:13 8 utilized her for all the communications.

19:22:18 9 Q. I want to look at something on
19:22:19 10 the page that ends 753 under Project
19:22:21 11 Level-Set priorities. It says as of last
19:22:28 12 week we determined that our first priority
19:22:31 13 was to ensure customers had outstanding
19:22:33 14 service through January, 2008. Do you see
19:22:36 15 that?

19:22:36 16 A. Yes.

19:22:40 17 Q. Was that true?

19:22:41 18 A. Pardon?

19 19 Q. Was that true?

19:22:41 20 A. Yes.

19:22:42 21 Q. Why was it decided that was your
19:22:44 22 first priority?

19:22:48 23 A. Going back to my earlier
19:22:51 24 testimony, customers were innocent victims
19:23:02 25 so to speak of the litigation and we wanted

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19:23:04 1 to ensure that SAP and TomorrowNow had an
19:23:10 2 outstanding reputation for customer service
19:23:12 3 and customer support. So we wanted -- we
19:23:16 4 had a contract with them as TomorrowNow, and
19:23:19 5 would he wanted to honor that contract and
19:23:23 6 not force them to find another service
19:23:27 7 provider because of the litigation.

19:23:31 8 Q. And that was your top priority,
19:23:35 9 is that correct?

19:23:38 10 A. Through January, so from the
19:23:42 11 December through January, for those
19:23:43 12 customers that had not transitioned to
19:23:46 13 remote support, it was to provide them their
19:23:49 14 regulatory tax updates for payroll so that
19:23:52 15 they could continue to run their business
19:23:55 16 because if we had forced them to go to
19:23:58 17 remote support and not provided them with
19:24:01 18 the regulatory updates, they would fail
19:24:05 19 their employees.

19:24:06 20 Q. Was it your decision to make this
19:24:08 21 the first priority?

19:24:10 22 A. Yes.

19:24:11 23 Q. And those regulatory tax updates
19:24:15 24 for payroll that were provided in December
19:24:17 25 or January, were those created in part at

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19:24:22 1 least using a non-remote model?

19:24:25 2 MR. COWAN: Objection, form.

19:24:27 3 A. Yes.

19:24:29 4 Q. Let's see, skipping the middle
19:24:38 5 sentence, starting with the sentence we have
19:24:39 6 to go to remote support but we also need to
19:24:43 7 honor our contracts, do you see that?

19:24:47 8 A. I do.

19:24:47 9 Q. And was that true?

19:24:48 10 A. Yes.

19:24:49 11 Q. For the reasons you just stated?

19:24:50 12 A. Yes.

19:24:51 13 Q. For any other reasons?

19:24:52 14 A. No.

19:24:53 15

19:25:03 16

19:25:06 17

19:25:08 18

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C E R T I F I C A T E

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, DAVID HENRY, a Notary Public within
and for the State of New York, do hereby
certify:

That MARK WHITE, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that such deposition is
a true record of the testimony given by such
witness.

I further certify that I am not related
to any of the parties to this action by
blood or marriage; and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 8th day of March, 2009.


DAVID HENRY

Corrections to the Transcript of the Deposition of

Mark White

Taken on March 5, 2009

Page	Line(s)	Reads	Should Read
11	21-22	... and with Scott Counsel	... and with Scott Cowan
11	9	... with Greg Tom	... with Greg Tomb
11	15	... Mr. Tom	... Mr. Tomb
24	20	... recall the names	... recall all the names
41	21-22	He said I was worried about the license agreements.	He said "I was worried about the license agreement."
64	4	... Bernard	... Werner
66	6	... as can you	... as you can
66	17-18	... do you it	... you do it
76	3	... Bernard	... Werner
79	7	... Ivar	... Yavar
128	6	Mr. Cowan: Yes	A: Yes
142	9	Mr. Wetts?	Mr. Welz?
142	11	Mr. Tom	Mr. Tomb
147	2	Bernard Brandt	Werner Brandt
180	24	Bonn	Baan
196	13	... it's no a	... it's on a
229	18	... is ans arrow	... is an arrow
287	20	... they it conversations	... they had conversations
304	20	... almost everone	... almost every one
306	15	?	no question mark
316	8	Bonn	Baan
318	7	... put him	... put it
320	17-19	... interpretation was it was a preference, SAP from SAP's perspective, and so let me go back.	... interpretation was it was a preference. SAP from SAP's perspective – and so let me go back.

